THE HONOURABLE SRI JUSTICE V.ESWARAIAH

Date:06-02-2007

WRIT PETITION Nos.21709 of 2005; 2894, 3328, 9934, 15094, 21905, 23663, 26548, 26658, 27209 of 2006 and 884, 905, 1109, 1112, 1533, 1802, 1847 and 1872 of 2007

WRIT PETITION No. 21709 OF 2005

BETWEEN

P.Vasanth Kumar S/o Ravinder Kumar,
R/o Sagar Complex, H.B.Colony, Moula Ali,
Ranga Reddy District.

...PETITIONER

AND

1. The Commissioner of Police, Cyberabad Commissionerate, Cyberabad, Lakdikapool, Hyderabad.
2. Mr.Seetharam, Inspector of Police, Kushaiguda Police Station, Ranga Reddy District.
3. Mr.Sampath Goud @ Sampath Kumar, 202, Sagar Residency, H.B.Colony, Moula Ali, Ranga Reddy District.

...RESPONDENTS

WRIT PETITION No.2894 of 2006

BETWEEN

Jatiya Santhi Sangam, a Regd. Society,
Bearing No.315 of 1995, Rep. by its
President, P. Suryanarayana, Guntur District.

...PETITIONER

AND

The Superintendent of Police,
Guntur, Guntur District and another.

...RESPONDENTS

WRIT PETITION No. 3328 OF 2006

BETWEEN

Handloom Weavers Co-operative Society Ltd.,
Kamareddy (Regd.No.19926) Nizamabad District,
Rep.by its Chairman D.Ramachander.

...PETITIONER

AND

1. The State of A.P., through S.H.O., PS., Kamareddy,
   Nizamabad District.
2. The State of A.P., Rep.by Superintendent of Police, Nizamabad.
3. Sri B. Muralidhar S/o Sri Vedam, 35 years, Sub Inspector of Police,
   Kamareddy Police Station, Nizamabad District.

...
RESPONDENTS

WRIT PETITION No.9934 of 2006

BETWEEN

Nallapti Sailaja, S/o. Srinivasarao,
R/o. Jaggadiguntapalem, Tenali Mandal,
Guntur District.

...PETITIONER

AND

The Superintendent of Police, Guntur District and another.

...RESPONDENTS

WRIT PETITION No. 15094 OF 2006

BETWEEN

Pesala Madhusudhan Rao S/o Pullaiah,
Occ: Business, R/o Pamuru village and Mandal,
Dist: Prakasam.

...PETITIONER

AND

1. The Station House Officer, Pamuru Post & mandal, Pamuru,
   District: Prakasam.
2. The Superintendent of Police, Prkasam.
3. Yadala Venkata Sesha Rao S/o Late Yadala Venkata Narayana,
   Occ: Ex-Sarpanch & Business, R/o Pamur village & Mandal of
   Prakasam District.

...RESPONDENTS

WRIT PETITION No. 21905 OF 2006
BETWEEN

P.Laxminarasamma W/o P.Chandraiah,

R/o Mogiligadda (v) Farooq Nagar (m),
Mahaboobnagar Dist.

...PETITIONER

AND

1. The Station House Officer, P.S. Shadnagar, Mahaboobnagar District.
2. The Deputy Superintendent of Police, Shadnagar, Mahaboobnagar District.
3. The Superintendent of Police, Mahaboobnagar Dist.
4. The Director General of Police & Inspector General of Police, Lakidikapool, Hyderabad.
5. The Principal Secretary, Govt. of Andhra Pradesh, Secretariat Building, Hyderabad.

...RESPONDENTS

WRIT PETITION No. 23663 OF 2006

BETWEEN

S.M. Ramakrishna Goud, S/o late S.M. Ramulu Goud,
R/o 17-7-352, Brahmanawadi, Yakutpura, Hyderabad.

...PETITIONER

AND

1. The Station House Officer, Kanchanbag P.S., Hyderabad
2. Commissioner of Police, Hyderabad.
3. M. Chandraiah Goud S/o Mallaiah Goud,
   President, TCS., Champapeta Hyderabad.

...RESPONDENTS

WRIT PETITION No. 26548 OF 2006

BETWEEN

1. Pallamala Nagaraju S/o Nagaiah,
   Occ: Agriculture labour, R/o Palamala village,
   Chilakur Mandal, Nellore District.
2. P. Seenaiah S/o Bakkaiah, Occ: Agriculture labour,
   R/o Palamala village, Chilakur Mandal, Nellore District.

...PETITIONERS

AND

1. The Principal Secretary to Government,
   Home Department, Govt. of Andhra Pradesh,
   A.P. Secretariat, Hyderabad.
2. The Director General and Inspector General of Police,
   Andhra Pradesh, Hyderabad.
3. The Superintendent of Police, Nellore District, Nellore.

4. C. Manikya Rao S/o not known, Station House Officer, Chillakur Police Station, Challakur Mandal, Nellore District.
5. Nazeer Basha S/o not known, Head Constable, Chillakur Police Station, Chillakur Mandal, Nellore District.
6. Ramana Reddy S/o note known, Police Constable, Chillakur Police Station, Chillakur Mandal, Nellore District.
7. Sri Suresh S/o not known, Police Constable, Chillakur Police Station, Chillakur Mandal, Nellore District.
8. Krishna S/o not known Police Constable, Chillakur Police Station, Chillakur Mandal, Nellore District.
9. Srinivasulu S/o not known, Police Constable, Chillakur Police Station, Chillakur Mandal, Nellore District.
10. Subrahmanyam S/o not known, Police Constable, Chillakur Police Station, Chillakur Mandal, Nellore District.
11. Venkateshwarlu S/o not known, Police Constable, Chillakur Police Station, Chillakur Mandal, Nellore District.
12. Narayana S/o not known, Police Constable, Chillakur Police Station, Chillakur Mandal, Nellore District.
13. Seshaiah S/o not known, Police Constable and other Constables from Chillakur Police Station, Nellore District.
14. Perugu Siva Jyothi Kumar S/o Guravaiah, Subhash Chandra Bose Nagar, Vedayapalem, Nellore District.
15. Perugu Sivarama Prasad S/o Guruvaiah, D.E.E (Electrical), Guntur-1, Guntur District.
16. Uppala Ravi S/o Ramaiah, Kovuruvari Palem village, Chilakur Mandal, Nellore District.

...RESPONDENTS

WRIT PETITION No. 26658 OF 2006

BETWEEN

Guguloth Sankil W/o Parshu, Occ: Labour,
R/o Harichand Thanda of Vennaram village,
Domakal Mandal, Warangal District.

...PETITIONER

AND

1. State of Andhra Pradesh Rep.by Superintendent of Police, Warangal District.
2. Deputy Superintendent of Police, Mahaboobabad, Warangal District.
3. Sub-Inspector of Police, Domakal P.S., Domakal Mandal, Warangal District.
4. N.Chandra Bhanu S/o Roujya, age 35 years, Occ: Sub-Inspector of Police, Domakal P.S., Domakal Mandal, Warangal District.

...RESPONDENTS

WRIT PETITION No. 27209 OF 2006

BETWEEN

Smt. P. Rambayamma W/o Anjaiah,
Occ: Household, R/o Chinnanallaballi (v)
Dummagudem (M), Khammam District.

...PETITIONER

AND

1. The Superintendent of Police, Khammam.
2. Station House Officer, Dummagudem P.S., at Dummagudem, Khammam District.
3. Sri Kanithi Venkateswara Rao S/o Chenchaiah, aged 35 years, Occ: Cultivation, R/o Chinnanallaballi (v), Dummagudem (M), Khammam District.

...RESPONDENTS

WRIT PETITION No. 884 OF 2007

BETWEEN

Katepalli Ramachandra Rao S/o late Sangaiah,
Occ: Business, M/s. Sri Gopalakrishna Timber
Depot, door No.26-9-12/1, Nagarampalem,
Guntur, R/o H.No.26-9-18, Vijayalakshmi Theatre,
Gundiaraopet, Guntur.

...PETITIONER

AND

1. The Secretary, Home Department, Government of Andhra Pradesh, Secretariat, Buildings, Hyderabad.
2. The Director General and Inspector General of Police, Government of Andhra Pradesh, Lakidikapul, Hyderabad.
3. The Deputy Inspector General of Police, Guntur Range, Guntur.
4. The Superintendent of Police, Guntur, Guntur District.
5. The Station House Officer, Nagarampalem Police Station, Guntur.
6. The Sub Inspector of Police, Nagarampalem Police Station, Nagarampalem, Guntur.

...RESPONDENTS

WRIT PETITION No. 905 OF 2007

BETWEEN

1. Smt. Kaneez Fathima W/o late Dhairyavangir,
2. Smt. Jameela D/o late Raja Dhairyavangir,
3. Smt. Najma D/o late Raja Dhairiyavangi, 29 years.

(All are R/o 4-2-15, Isa Khan Bagh, Vikarabad, R.R. District).

...PETITIONERS

AND

1. The Superintendent of Police, Ranga Reddy District, Hyderabad.
2. The Station House Officer, Vikarabad R.R.District.

...RESPONDENTS

WRIT PETITION No. 1109 OF 2007

BETWEEN

Ameena Begum W/o M.A. Rahim,
R/o H.No.5-1-2, Near Hotel Surya Palace,
Coolie Lane, Bhajan Mandir Road,
Kothagudem, Khammam District.

...PETITIONER

AND

1. The Station House Officer, III-Town Police Station,
   Kothagudem, Khammam District.
2. The Deputy Superintendent of Police, Kothagudem,
   Khammam District.
3. The Superintendent of Police, Khammam, Khammam District.

...RESPONDENTS

WRIT PETITION No. 1112 OF 2007

BETWEEN

1. Adi Ramakistaiah S/o Mallaiah,
   R/o Village and Mandal Doulatabad,
   District Medak at Sangareddy.
2. Adi Mangamma W/o Adi Ramakistaiah,
   Housewife, R/o Village and Mandal Doulatabad,
   District Medak at Sangareddy.

...PETITIONERS

AND

1. Superintendent of Police, Medak at Sangareddy.
2. Sub Inspector of Police, Doulatabad, Medak District.
3. Sub Inspector of Police, Gajwel, Medak District.

...RESPONDENTS

WRIT PETITION No. 1533 OF 2007

BETWEEN

M/s. Gem Granites (P) Limited, rep. by its Regional Manager R. Gunasekharam S/o G. Raju, # 76, Cathedral Road, Chennai.

...PETITIONER

AND

1. The Superintendent of Police, Prakasam District, Ongole.
2. The Station House Officer, Chimakurthy Police Station, Prakasam.

...RESPONDENTS

WRIT PETITON No.1802 of 2007

BETWEEN

V.P.S. Dwivedhy, S/o. V. N. Sasthry,
Occ: Veda Parayana Pandit,
R/o. H.No.9-4-107/1, Bhagwanth Rao Nagar,
Vemulawada, District Karimnagar.

...PETITONER

AND

Inspector of Police, Maheshwaram Police Station,
Maheshwaram, Ranga Reddy District and another.

...RESPONDENTS

WRIT PETITION No.1847 OF 2007

BETWEEN

Sr. M.M. Vasu, S/o. M. Keshava Rao,
Occ: Journalist, R/o. 1-24-21/4,
Sri Sai Nagar, Lothukunta, Secunderabad.

...PETITIONER

AND

The Commissioner of Police, Cyberabad, Lakdikapool,
Hyderabad and another.

...RESPONDENTS

WRIT PETITION No.1872 of 2007

BETWEEN

Alluri Jyothi, W/o. Srinivasa Raju,
Occ: Housewife, R/o.134/B,
Asra Housing Society, Hudgi Road,
Sholapur, Maharastra.

...PETITIONER

AND

The Superintendent of Police, Guntur District,
Andhra Pradesh and others.

...RESPONDENTS

COMMON ORDER:

In all these writ petitions, similar questions are involved and therefore, they are disposed of by a common order.

2. The petitioners seek a Writ of Mandamus to declare the inaction of the concerned Station House officers of the Police Stations in not registering the written representations made by them as illegal and arbitrary and to direct them to register cases, investigate the same and file final reports.

3. The learned counsel appearing for the petitioners submit that in spite of making written representations before the concerned Station House Officers, marking copies to the superior police officials, no crime has been registered and the official respondents have failed to discharge their statutory duties and therefore, they seek to issue a writ of mandamus directing the concerned police officials to register the crime and investigate the same.

4. On the other hand, the learned Government Pleader for Home appearing for the official respondents submits that there is sufficient alternative mechanism available under the Code of Criminal Procedure, 1973 (for short "the Code") and none of the petitioners have taken recourse under the relevant provisions of the

Code and therefore, it may not be appropriate to issue writ of mandamus.

5. Sections 154 to 176 under Chapter XII of the Code deals with the information to the police and their powers to investigate. Sections 177 to 189 of Chapter XIII deals with the jurisdiction of the Criminal Courts in inquiries and trials. Sections 190 to 199 of Chapter XIV deals with the conditions requisite for initiation of proceedings. Sections 200 to 203 of Chapter XV deals with the complaints to Magistrates. Sections 204 to 210 of Chapter XVI deals with the commencement of proceedings before the Magistrates.

6. The substance of every written information relating to the commission of cognizable offence given to an officer in charge of the Police Station shall be entered in General Diary. A copy of such information as recorded in the General Diary as contemplated under Section 154 of the Code shall be given forthwith, free of cost to the informant. If the officer in charge of the Police Station refuses to record such information, the person aggrieved by such refusal may send the substance of such written information either by post or in person to the Superintendent of Police concerned, who if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by the Code and such officer shall have all the powers of an officer in charge of the Police Station in relation to that offence.

Information received even in respect of non-cognizable offences, the substance of such information shall also be entered in the General Diary, but without the orders of the Magistrate, such offences cannot be investigated. Where the cases relate to two or more offences, of which at least one is cognizable, the cases shall

be deemed to be cognizable cases notwithstanding that the other offences are non cognizable, the officer in charge of the Police Station is entitled to investigate both cognizable as well as non cognizable offences without any order of the Magistrate and file a report.

7. The allegations in all these cases are about the information of committing of cognizable offences. Under Section 156(1) of the Code, any officer-in-charge of a Police Station may investigate the cognizable case, which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provision of Chapter XIII. The officer in charge of the police Station shall also investigate the cognizable case on the order of the Magistrate passed under Section 190 of the Code. Under Section 157 of the Code, if the officer in charge of the Police Station has reason to suspect the commission of such offence within the limits of the Police Station, he shall forthwith send a report of the same to the concerned Magistrate and shall proceed to the spot to investigate the facts and circumstances of the case, but however, if such information as to the commission of the offence is not of a serious nature, immediate spot investigation is not necessary and if there is no sufficient ground for entering on an investigation, he shall not investigate the case.

Under Section 157(2) of the Code, wherever the officer in charge of the Police Station decides not to make an investigation or that there is no sufficient ground for entering into investigation, he shall notify to the informant about his decision for not investigating the case.

Every report under Section 157 of the Code shall be sent to the Magistrate through the superior officer of the police and on such report, the superior officer may give necessary instructions and shall forward such instructions on such report to the Magistrate.

8. On receipt of such report, the Magistrate may direct an investigation or, if he thinks fit, he can proceed to hold a preliminary inquiry into or otherwise to dispose of the case in the manner provided in the Code. In other words, if the report shows that a cognizable offence has been committed, he may take cognizance under Section 190(b) of the Code and proceed further to dispose of the case in the manner provided under the Code and if such report discloses that no case has been committed, he can make a preliminary enquiry with regard to the report and also redirect an investigation and if he satisfies with the report, he may accept the report also.

9. Under Section 172 of the Code, every police officer making an investigation under Chapter XII shall enter day-by-day proceedings in a Diary. Under Section 173 of the Code, every investigation shall be completed without unnecessary delay and after its completion he shall forward the report in the prescribed form to the Magistrate. Even after submitting the report under Section 173 of the Code, if any further evidence is received, further investigation can be made and further report or reports regarding such evidence shall be forwarded to the Magistrate.

10. Under Section 190 of the Code a) upon receipt of a complaint of facts filed under Section 200 of the Code the Magistrate may take cognizance of such offences, b) upon a police report of such facts, and c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. Thus, Section 190 clearly goes to show that the basis for a Magistrate to take cognizance of cognizable offence is based upon a private complaint filed under Section 200 of the Code after examining the complaint and witnesses and upon police

reports received under Section 173 of the Code and also upon information received from any person or upon his own knowledge that such offence has been committed; while dealing with any case before him.

11. Section 200 of the Code independently empowers the Magistrate to take cognizance of an offence on a complaint other than a police report. Whenever a complaint has been filed under Section 200 of the Code the Magistrate either can take cognizance after examining the complainant and the witnesses under Section 190(a) and issue process commencing the proceedings under Section 204 or postpone the issue of process against the accused and either enquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding and or he can as well dismissed the complaint under Section 203 if there are no sufficient grounds for proceeding.

12. Under Section 210 of the Code when a complaint is pending and investigation by the police is in progress in respect of the same offence than the Magistrate shall stay the proceedings in the complaint case and call for a report on the matter from the police officer conducting investigation. After filing a report if any cognizance is taken by the Magistrate against the accused in a complaint case the Magistrate shall also enquire into and try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report. Under Section 210(3) of the Code if the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the enquiry or trial which was stopped by him, in accordance with the provisions of the Code.

13. While considering the object of enacting Section 210 of the Code the Apex Court in **SANKARAN MOITRA v. SADHNA DAS**[1] at Paras 75 to 80 held that during an enquiry or trial relating to complaint case, if it is brought to the notice of the Magistrate that an investigation by the police is in progress in respect of the same, he shall stay the proceedings of the complaint case and call for the report of the police officer conducting the investigation. The object of Section 210 is intended to ensure that private complaint do not interfere with the course of justice, which prevents harassment to the accused and which obviates anomalies which might arise from taking cognizance of the same offence more than once. To invoke Section 210 of the Code the following conditions must be satisfied:

i. There must be a complaint pending for enquiry under trial;
ii. Investigation by the police must be in progress in relation to the same offence;
iii. A report must be made by the police officer under Section 173; and
iv. The Magistrate must have taken cognizance of an offence against a person who is an accused in the complaint case.

14. The analysis of the aforesaid relevant provisions of the Code goes to show that in the absence of any action taken by a police officer in charge of a police station on a written information furnished by any person, such person can bring it to the notice of the Superintendent of Police and in such cases, the SP either investigate the case by himself or entrust the matter to any police officer subordinate to him. On a written information furnished by a person about a cognizable office, if no action has been taken by the officer in charge of the police station by entering the said information in the general diary or fails to register a cognizable case under Sections 154 to 157 of the Code, it is open for such person to file a complaint under Section 200 of the Code before the concerned

Magistrate. Under Section 200 of the Code a complaint can directly be filed even without approaching the concerned officer in charge of the police station. If any such complaint is filed before the Magistrate without furnishing any written information to the officer in charge of the police station about commission of a cognizable offence, the course open to the Magistrate after examining the complainant and witnesses either to take cognizance under Section 190(a) of the Code or refer the matter under Section 156(3) of the Code for investigation and report or taken recourse under Section 202 of the Code or dismiss the complaint under Section 203 of the Code as stated above.

15. Whereas if any written information is furnished to the officer in charge of the police station, the substance of such information shall be entered in the book under Section 154 of the Code and if the officer in charge of the police station has a reason to suspect the commission of a cognizable offence he shall immediately enter the same in the FIR register and send the same to the concerned Magistrate and proceed to investigate forthwith without there being lapse of time, as there is a statutory duty cast on the investigating officer to complete the investigation without unnecessary delay. But whereas in urgent cases where immediate investigation is required and in such cases instead of furnishing written information to the concerned officer in charge of the police station so as to enable them to immediately send the FIR to the Magistrate and to proceed and investigate and in such cases, where the complaint is filed before the concerned Magistrate under Section 200 of the Code some delay is bound to occur as the Magistrate has to examine the complainant and the witness before taking appropriate action. In all cases, where there is no urgency it may not be possible for the police to proceed to the spot and investigate the facts and circumstances; take measures for discovery and arrest

the offender, but the powers of the Magistrate under the Code are wider than the officer in charge of the police station for taking cognizance of any offence. Even in cases where investigation is pending; complaint can also be filed before the concerned Magistrate under Section 200 of the Code, in which case the Magistrate instead of proceeding with enquiry or trial in the complaint case he can call for the report on the matter from the police officer conducting investigation and thereafter proceed on both private complaint as well as the police report treating both cases as instituted as a police report. Thus, I am of the opinion that there is effective alternative remedy available to the petitioners under the Code itself to set criminal action in motion and instead of taking the aforesaid recourse, it is not just and proper for the petitioners to straightway approach this Court for issuance of a writ of mandamus to direct the concerned Station House Officers to register the FIR and investigate the matter.

16. In all cases, it may not be just and necessary to register FIR and investigate the matter and the police officer is entitled to apply his mind and take a decision to come to a conclusion whether there are reasons to suspect the commission of cognizable offence. If the police officer fails to register FIR or fails to receive written information by entering into the general diary it is always open to such persons to file a complaint immediately before the Magistrate under Section 200 of the Code.

17. Learned counsel for the petitioners submits that it is the statutory duty of the officer in charge of the police station to register FIR and investigate the matter upon receipt of a written information and when the officer in charge of the police station fails to perform his duty there is no other course open to the petitioners except to approach this Court seeking appropriate relief directing the police officers to register the FIR and investigate the cognizable

cases based on the written representations.

18. They have relied on two judgments of the Apex Court Viz. **STATE OF HARYANA v. BHAJAN LAL** [2] and **MOHINDRO v. STATE OF PUNJAB** [3]. In Bhajan Lal's case the matter relates to quashing of criminal proceedings initiated by the police. In the said case the Division Bench of the Punjab and Haryana High Court quashed the entire criminal proceedings inclusive of registration of information report against which the State of Haryana filed civil appeal before the Supreme Court. The Supreme Court dealt with various arguments relating to cognizable offences warranting registration of cases as contemplated under Section 154(1) of the Code demanding thorough investigation in compliance with various statutory provisions particularly Sections 156, 157 and 159 of the Code falling under Chapter XII. The legal mandate enshrined under Section 154(1) of the Code is that every information relating to commission of cognizable offence, the substance of which shall be entered in the prescribed book and the officer in charge of the police station is statutorily obliged to register the case and then proceed to investigate if he has reason to suspect commission of offence after sending the report to the concerned Magistrate. For recording the first information report there must be information and that information must disclose a cognizable offence. If any information disclosing a cognizable offence is laid before the officer in charge of the police station satisfying the requirements of Section 154(1) of the Code the said officer has no other option except to enter the substance thereof in the prescribed book, that is to say, to register the case on the basis of such information. The commencement of investigation by the police officer is subject to the condition that the police officer should have reason to suspect the commission of a cognizable offence as required under Section 157(1) of the Code

and that the police officer should have subjectively satisfied himself as to whether there is sufficient ground for entering on an investigation even before he starts an investigation into the facts and circumstances of the case as contemplated under clause (b) of the proviso to Section 157(1) of the Code.

In the said case the central issue involved for scrutiny was whether the order of the High Court in quashing the First Information Report and the proceeding of the investigation is legally sustainable and if not, to what extent the said order suffers from legal infirmity. While dealing with several cases relating to exercise of extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 of the Code the Supreme Court gave the following cases by way of illustration wherein such power could be exercised either to prevent abuses of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to given an exhaustive list of myriad kinds of cases wherein such power could be exercised.

1. Wherein the allegations made in the First Information Report or complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a

Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or whether there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

The Supreme Court gave a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of the rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice. When there are only allegations and recriminations but no evidence, the Court cannot anticipate the result of the investigation and render a finding on the question of mala fides.

In the said case investigation was made by the Station House Officer for the offence under Section 5A(1) of the Prevention of Corruption Act but not by an officer with the rank of Deputy Superintendent of Police.

The Supreme Court while setting aside the judgment of the High Court in quashing the FIR gave a liberty to the State Government to direct an investigation afresh by a competent officer with valid legal authority under Section 5A(1) of the Act. Though the Supreme Court

exhaustively dealt with the manner and method of registering FIR and investigating the case by the concerned officers in charge of the police stations and laid down the principles relating to the parameters of quashing the Fir, I am of the opinion that the said principles laid down by the Supreme Court are of no help to the relief claimed by the petitioners in these writ petitions.

19. In **Mohindro's** case (3 supra) the grievance was that police did not register the case or put the law in motion and that the High Court also failed to consider the prayer of the complainant to get a case registered. The Supreme Court noticed that there had been enquiry in the matter without registering a criminal case. In those circumstances, the Supreme Court held that without registering a case the police cannot make enquiry and accordingly directed a case to be registered on the basis of the report to be lodged by the complainant therein at the police station within a week from the disposal of the said case and thereafter the matter be duly investigated into and appropriate action be taken according to law. A careful reading of the said judgment goes to show that enquiry had been taken up without registering a case based on the information received from a person for registering case and in those circumstances, the Supreme Court directed to register the case on the basis of the report to be lodged by the person and thereafter to investigate for taking appropriate action. The relevant provisions of the Code aforesaid have not at been discussed in the judgment, but however, as the police cannot enquire or investigate a cognizable case without registering it, such a direction was given. However, this judgment cannot be followed in view of the later judgment of another Division Bench in **HARI SINGH v. STATE OF UP**[4]

20. In **HARI SINGH's** case (4 supra) when information was laid with the police no action in that behalf was taken and while dealing

with Sections 154, 156, 190 read with Section 200 of the Code the Supreme Court held that when no action has been taken on the information laid with the police the complainant can under Section 190 read with Section 200 of the Code lay a complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into and take appropriate action under the provisions of Sections 200 to 203 of Chapter XV of the Code. The said aspects have been highlighted by the Supreme Court in **ALL INIDA INSTITUTE OF MEDICAL SCIENCES EMPLOYEES' UNION v. UNION OF INDIA**[5], which position was again highlighted in **GANGADHAR JANARDHAN MHATRE v. STATE OF MAHARASHTRA**[6] and in **MINU KUMARI v. STATE OF BIHAR**[7] wherein the Supreme Court held that writ petition in such cases need not be entertained.

21. In **ALL INIDA INSTITUTE OF MEDICAL SCIENCES EMPLOYEES' UNION's** case (5 supra) the Supreme Court dealt with similar contentions wherein a writ petition has been filed in the Delhi High Court seeking writ of mandamus to police to investigate into the allegations made in the written representation. The Delhi High Court refused to entertain the writ petition, which was question before the Supreme Court and the Supreme Court while dealing with the aforesaid provisions of Sections 155 to 157, 173, 190, 200 and 203 of the Code held that as the person/complainant has not taken recourse under Section 190 read with Section 200 of the code by laying a complaint before the Magistrate having jurisdiction to take cognizance of the offence and without availing the aforesaid procedure one cannot approach the High Court by filing a writ petition seeking a direction to conduct investigation.

In **GANGADHAR JANARDHAN MHATRE's** case (6 supra)

wherein a writ petition was filed seeking several reliefs to quash the sessions case, to transfer investigation in the pending crime etc., was dismissed following the judgment in **ALL INIDA INSTITUTE OF MEDICAL SCIENCES EMPLOYEES' UNION's** case and held that writ application was not the proper remedy and without availing the remedy available under the Code one cannot approach the High Court by filing a writ application.

22. It is also pertinent to note that in **STATE OF ORISSA v. SAROJ KUMAR SAHOO**[8] the Supreme Court held that where the investigation was not completed, at that stage it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under Section 482 of the Code, it is not permissible for the Court to act as if it was a trial Court. Even when a charge is framed at that stage, the Court has to only prima facie be satisfied about the existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. When the materials relied upon by a party are required to be proved, no inference can be drawn on the basis of those materials to conclude the complaint to be unacceptable. The Court should not act on annexures to the petitions under Section 482 Cr.P.C., which cannot be termed as evidence without being tested and proved. Thus, it was held that it is not justifiable by the High Court in quashing the investigation and proceedings in the aforesaid circumstances.

In view of the aforesaid judgments of the Supreme Court in **ALL INIDA INSTITUTE OF MEDICAL SCIENCES EMPLOYEES' UNION's** case**; GANGADHAR JANARDHAN MHATRE's** case and

MINU KUMARI's case, I am of the opinion that the judgment in **Mohindro's** case has no application to the facts of the instant cases, as the direction issued therein is distinguishable as without registering a case enquiry was conducted.

23. As already stated, there is an effective alternative remedy available to the petitioners to set the law in motion by filing a private complaint under Section 200 of the Code for taking appropriate action. Wherever the officer in charge of the police station either refuses to enter the substance of the written representation in the prescribed book and fails to register the FIR in the FIR book, where there is reason to suspect the commission of a cognizable offence, they can avail the remedy under the Code as aforesaid. Apart from that,

if any, public servant knowingly disobeys any direction of law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine or wit0h both under Section 166 of Indian Penal Code, 1860. Under the Andhra Pradesh Police Code the powers and the duties of the police officers have codified. Under the Andhra Pradesh Police Manual also the powers and duties of the police officers have been specified.

If there is any dereliction of the duties or disobedience of any direction of law, they are not only liable for punishment under Section 166 IPC but also liable for disciplinary proceedings under Chapter 10 of AP Police Manual.

24. In view of the aforesaid facts and circumstances, I am of the opinion that these writ petitions cannot be entertained and they are liable to be dismissed. If any cases have been registered pursuant

to the written information, the same shall be preceded in accordance with law.

For the aforesaid reasons, the writ petitions are accordingly dismissed. No costs.

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V. ESWARAIAH, J

6th February, 2007

DSK

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[1] (2006) 4 SCC 54

[2] AIR 1992 SC 604

[3] (2001) 9 SCC 581

[4] (2006) 5 SCC 733

[5] (1996) 11 SCC 582

[6] (2004) 7 SCC 768 : 2005 SCC (Cri.) 404

[7] (2006) 4 SCC 359

[8] (2006) 2 SCC (Cri) 272